CF0000063082

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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 503 /2000 Division Bench (Criminal)

Appellant :- Bishatram son of Ankalharam
(In Jail)
aged about 35 yrs, residentof village Mohara
police station - Gurur, Distt Durg M.P.
Risali Sector - 253, Bhilai Distt. Durg (M.P.)

- versus -

Respondent :- State of M.P.

Conviction	Sentence
under section 498 I.P.C.	R.I. for three years.
under section 304 B I.P.C.	R.I. for life

(Both sentence runs concurrently)

CRIMINAL APPEAL UNDER SECTION 374 CRIMINAL PROCEDURE CODE.

(16)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 503/2000 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

1-3-2007

Shri Hanuman Prasad Agrawal, Advocate for the appellant.

Shri Sudhir Bajpai, Panel Lawyer for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J.:

This appeal is directed against the judgment of conviction and order of sentence dated 25-1-2000 passed by Additional Sessions Judge, Baiod, District Durg in S.T. No. 272/95, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 498-A and 304-B of the Indian Penal Code, sentenced him to undergo R.I. for 3 years and imprisonment for life respectively. Both the sentences are directed to run concurrently.

2. Case of the prosecution is that deceased Veena was married with accused-appellant on 2-5-1994, thereafter she started residing with her husband. Before the death, about 20 days she was residing with her mother Chaiti Bai in Madauda. At that time, the accused was also used to reside at Madauda in his mother-in-law's house. On 27-12-1994, the accused-appellant received the information that his mother has died, therefore, Veena and the accused-appellant went to the house of the accused-appellant, on 28-12-2004, Veena consumed poison 'Organic Phosphorus', she was taken to Christian Hospital, Dhamtari where she died on account of consumption of poison. Merg intimation Ex. P-8 was sent by Christian Hospital, Dhamtari to the Police Station, Dhamtari whereupon the Station House Officer, Police Station, Dhamtari reached to

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आदेश पत्रक (पूर्वानुबद्ध)

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the Hospital. He prepared the inquest Ex. P-2 on the body of Veena. Post mortem on the body of Veena was conducted by Dr. R.H. Mishra and Dr. O.S. Bajpai, they prepared post mortem report Ex. P-4. They opined that cause of death is due to asphyxia caused by suspected poisoning. The marriage card was taken into possession by the Investigating Officer under Ex. P-1. Visceras were preserved and same were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report Ex. P-11 was received. As per the report of viscera, the Laboratory reached to the conclusion that visceras were containing Organo phosphorus insecticide (Phosphomidan). Statements of witnesses were recorded, thereafter offence under Section 304-B of I.P.C. was registered. After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Balod who in turn committed the case to the Sessions Judge, Durg from where learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused-appellant examined 12 witnesses. Statement of the accused-appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused-appellant as aforementioned.

5. We have heard Shri Agrawal on behalf of the appellant and Shri Bajpai on behalf of the State.

6. Case of the prosecution is that after marriage of Veena (since deceased) with accused-appellant, he started harassing and subjecting

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her to cruelty for demand of dowry i.e. motorcycle. In order to bring home the crime under Section 304-B of I.P.C., the prosecution is required to establish that (i) the marriage was solemnized within a period of 7 years from the date of offence; (ii) death of women was caused by any burns or bodily injury or occurred otherwise than under normal circumstances; and (iii) it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative or her husband for, or in connection with, any demand for dowry.

7. In the present case, it is admitted position that Veena (since deceased) was married to accused on 2-5-1994, she died on 28-12-1994 on account of consumption of poison (Organic Phosphorus) when she was at the residence of accused-appellant, therefore, the first two requirements are satisfied.

8. Now the question remains as to whether the prosecution has been able to establish beyond reasonable doubt against the accused-appellant that soon before her death, Veena was subjected to cruelty or harassment by accused-appellant in connection with demand of dowry i.e. motorcycle. To establish this fact, the prosecution has examined P.W. 1 Lalita Bai- step mother of the deceased, P.W. 2 Kratdas Ghilendra- father of the deceased, P.W. 3 Umesh Kumar- brother-in-law (*Bahnoi)* of the deceased, P.W. 4 Smt. Chaiti Bai- real mother of the deceased, P.W. 5 Kumari Bai- sister-in-law (*Bhabhi)* of the deceased and P.W. 6 Smt. Punbai- grand-mother of the deceased. Almost every witness has stated that the accused used to harass and subject Veena to cruelty on the ground that she should bring motorcycle which was not given in the dowry at the time of marriage. Now whether in view of the evidence of the above witnesses, the prosecution has been able to establish that soon before the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

death, she was subjected to harassment and cruelty for demand of dowry, after perusing the evidence of prosecution witnesses, we are of the considered opinion that the prosecution has been utterly failed to establish the above fact for the following reason:-

9. Just after the death of Veena, inquest Ex. P-2 on the body was prepared by the Station House Officer, Police Station, Dhamtari in presence of Kratdas Ghilendra- father of the deceased as also Smt. Chaitibai- real mother of the deceased, in which it has been mentioned that the accused and the deceased used to reside in BSP Sector 4, Bhilai as the accused was working in the Bhilai Steel Plant. As there was night duty of the accused-appellant, therefore, Veena was residing with her mother Smt. Chaiti Bai at Madauda. The accused also used to reside with his wife in the house of his mother-in-law. They were residing their since last 20 days. On 27-12-1994, a message was received that the mother of the accused-appellant had expired at Mohara, therefore, the deceased and the accused came to Mohara on the same day and next day morning i.e. 28-12-1994, the deceased consumed 'Organic Phosphorus', she was taken to Bathena Hospital, Dhamtari where she died. The father and the mother of the deceased were present at the time of preparation of this inquest report. They had not said anything about harassment or cruelty by the accused-appellant with Veena for demand of dowry. Even after the death of their daughter, these persons did not make any complaint before the police regarding demand of dowry as also harassment and cruelty by the accused-appellant.

10. Statements of Chaitibai (Ex. D-3) –mother of the deceased was recorded on 28-3-1995, Statement of Kratdas Ghilendra (Ex. D-2) – father of the deceased was recorded on 26-1-1995, statement of Lalitabai (Ex.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D-1)- step mother of the deceased was recorded on 19-1-1995 and statement of Kumari Bai (Ex. D-4) sister-in-law of the deceased was recorded on 29-1-1005 i.e. with one month's delay. No explanation has been offered by the prosecution as to why these statements were recorded with such a delay. Even the statement of Lalitabai was recorded after 28 days of the incident. As per the evidence, just before the death, the deceased and the accused-appellant used to reside with Chaitibai-real mother of the deceased and before that the accused-appellant and the deceased used to reside in Mohara. In police diary statement Ex. D-3, Chaitibai has categorically stated that Veena used to reside with her husband in Sector 4, Bhilai in their quarter. At that time, she stayed with them 3-4 days, both of them used to reside peacefully and Veena never complained against the accused-appellant for harassment. Thereafter in the month of December, Veena and accused-appellant started residing with her at her house at Madauda. In one night Veena disclosed that accused-appellant is demanding motorcycle and he is harassing her. Even other witnesses have also stated so but they have stated that they have never told this fact to any other person nor convened any Panchayat nor the matter was reported to the police. Therefore, if all the circumstances mentioned above are taken together, only inference can be drawn that the story of harassment for demand of dowry was cooked up only after death of Veena. Had the accused-appellant used to harass the deceased for demand of dowry, then there was no question of accused-appellant residing with his wife at his mother-in-law's place for about 20 days continuously. Even P.W. 4 Chaitibai has stated that even after the complaint made by Veena, she did not say anything to the accused-appellant. Had Veena said so to the mother, in natural course, it was

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आदेश पत्रक (पूर्वानुबद्ध)

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expected that when the accused used to reside with them, she should have asked as to why he is harassing Veena. P.W. 1 Lalita Bai-step mother of Veena has stated that Veena came twice and both the times she complained about the demand of motorcycle, but this witness has stated that they had not disclosed this fact to any one, nor they convened any meeting of their caste people. Therefore, the prosecution has not been able to establish beyond reasonable doubt that soon before the death of Veena, she was subjected to harassment or cruelty in connection with demand of dowry and that is why she committed suicide. Therefore, conviction of the accused under Section 304-B of I.P.C. cannot be sustained.

11. As far as the conviction of the accused-appellant under Section 498-A of I.P.C. is concerned, for the same reasons, the prosecution has not been able to establish that the accused subjected Veena to cruelty.

12. In the result, the appeal succeeds and the conviction of the accused-appellant under Sections 498-A and 304-B of I.P.C. and sentences imposed upon him under those sections are set aside. It is stated that the accused-appellant is in detention since 25-1-2000, thereby he is in detention since more than six years. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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